

FIRST REGULAR SESSION

SENATE BILL NO. 565

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time February 26, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2408S.011

AN ACT

To repeal sections 452.340 and 452.375, RSMo, and to enact in lieu thereof three new sections relating to child custody orders.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 452.340 and 452.375, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 452.015, 452.340
3 and 452.375, to read as follows:

**452.015. Any judge that has a family court docket or issues
2 orders with regard to child custody, dissolution of a marriage involving
3 a minor child, or any motion to modify a custody or dissolution order
4 shall attend three hours of annual training on the subject of parental
5 alienation.**

452.340. 1. In a proceeding for dissolution of marriage, legal separation
2 or child support, the court may order either or both parents owing a duty of
3 support to a child of the marriage to pay an amount reasonable or necessary for
4 the support of the child, including an award retroactive to the date of filing the
5 petition, without regard to marital misconduct, after considering all relevant
6 factors including:

- 7 (1) The financial needs and resources of the child;
- 8 (2) The financial resources and needs of the parents;
- 9 (3) The standard of living the child would have enjoyed had the marriage
10 not been dissolved;
- 11 (4) The physical and emotional condition of the child, and the child's
12 educational needs;
- 13 (5) The child's physical and legal custody arrangements, including the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 amount of time the child spends with each parent and the reasonable expenses
15 associated with the custody or visitation arrangements; and

16 (6) The reasonable work-related child care expenses of each parent.

17 2. The obligation of the parent ordered to make support payments shall
18 abate, in whole or in part, for such periods of time in excess of thirty consecutive
19 days that the other parent has voluntarily relinquished physical custody of a
20 child to the parent ordered to pay child support, notwithstanding any periods of
21 visitation or temporary physical and legal or physical or legal custody pursuant
22 to a judgment of dissolution or legal separation or any modification thereof. In
23 a IV-D case, the family support division may determine the amount of the
24 abatement pursuant to this subsection for any child support order and shall
25 record the amount of abatement in the automated child support system record
26 established pursuant to chapter 454. If the case is not a IV-D case and upon
27 court order, the circuit clerk shall record the amount of abatement in the
28 automated child support system record established in chapter 454.

29 3. Unless the circumstances of the child manifestly dictate otherwise and
30 the court specifically so provides, the obligation of a parent to make child support
31 payments shall terminate when the child:

32 (1) Dies;

33 (2) Marries;

34 (3) Enters active duty in the military;

35 (4) Becomes self-supporting, provided that the custodial parent has
36 relinquished the child from parental control by express or implied consent;

37 (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this
38 section apply; or

39 (6) Reaches age twenty-one, unless the provisions of the child support
40 order specifically extend the parental support order past the child's twenty-first
41 birthday for reasons provided by subsection 4 of this section.

42 4. If the child is physically or mentally incapacitated from supporting
43 himself and insolvent and unmarried, the court may extend the parental support
44 obligation past the child's eighteenth birthday.

45 5. If when a child reaches age eighteen, the child is enrolled in and
46 attending a secondary school program of instruction, the parental support
47 obligation shall continue, if the child continues to attend and progresses toward
48 completion of said program, until the child completes such program or reaches
49 age twenty-one, whichever first occurs. If the child is enrolled in an institution

50 of vocational or higher education not later than October first following graduation
51 from a secondary school or completion of a graduation equivalence degree
52 program and so long as the child enrolls for and completes at least twelve hours
53 of credit each semester, not including the summer semester, at an institution of
54 vocational or higher education and achieves grades sufficient to reenroll at such
55 institution, the parental support obligation shall continue until the child
56 completes his or her education, or until the child reaches the age of twenty-one,
57 whichever first occurs. To remain eligible for such continued parental support,
58 at the beginning of each semester the child shall submit to each parent a
59 transcript or similar official document provided by the institution of vocational
60 or higher education which includes the courses the child is enrolled in and has
61 completed for each term, the grades and credits received for each such course, and
62 an official document from the institution listing the courses which the child is
63 enrolled in for the upcoming term and the number of credits for each such
64 course. When enrolled in at least twelve credit hours, if the child receives failing
65 grades in half or more of his or her courseload in any one semester, payment of
66 child support may be terminated and shall not be eligible for
67 reinstatement. Upon request for notification of the child's grades by the
68 noncustodial parent, the child shall produce the required documents to the
69 noncustodial parent within thirty days of receipt of grades from the education
70 institution. If the child fails to produce the required documents, payment of child
71 support may terminate without the accrual of any child support arrearage and
72 shall not be eligible for reinstatement. If the circumstances of the child
73 manifestly dictate, the court may waive the October first deadline for enrollment
74 required by this subsection. If the child is enrolled in such an institution, the
75 child or parent obligated to pay support may petition the court to amend the
76 order to direct the obligated parent to make the payments directly to the child.
77 As used in this section, an "institution of vocational education" means any
78 postsecondary training or schooling for which the student is assessed a fee and
79 attends classes regularly. "Higher education" means any community college,
80 college, or university at which the child attends classes regularly. A child who
81 has been diagnosed with a developmental disability, as defined in section 630.005,
82 or whose physical disability or diagnosed health problem limits the child's ability
83 to carry the number of credit hours prescribed in this subsection, shall remain
84 eligible for child support so long as such child is enrolled in and attending an
85 institution of vocational or higher education, and the child continues to meet the

86 other requirements of this subsection. A child who is employed at least fifteen
87 hours per week during the semester may take as few as nine credit hours per
88 semester and remain eligible for child support so long as all other requirements
89 of this subsection are complied with.

90 6. The court shall consider ordering a parent to waive the right to claim
91 the tax dependency exemption for a child enrolled in an institution of vocational
92 or higher education in favor of the other parent if the application of state and
93 federal tax laws and eligibility for financial aid will make an award of the
94 exemption to the other parent appropriate.

95 7. The general assembly finds and declares that it is the public policy of
96 this state that frequent, continuing and meaningful contact with both parents
97 after the parents have separated or dissolved their marriage is in the best
98 interest of the child except for cases where the court specifically finds that such
99 contact is not in the best interest of the child. In order to effectuate this public
100 policy, a court with jurisdiction shall enforce visitation, custody and child support
101 orders in the same manner. A court with jurisdiction may abate, in whole or in
102 part, any past or future obligation of support and may transfer the physical and
103 legal or physical or legal custody of one or more children if it finds that a parent
104 has, without good cause, failed to provide visitation or physical and legal or
105 physical or legal custody to the other parent pursuant to the terms of a judgment
106 of dissolution, legal separation or modifications thereof. The court shall also
107 award, if requested and for good cause shown, reasonable expenses, attorney's
108 fees and court costs incurred by the prevailing party.

109 8. The Missouri supreme court shall have in effect a rule establishing
110 guidelines by which any award of child support shall be made in any judicial or
111 administrative proceeding. Said guidelines shall contain specific, descriptive and
112 numeric criteria which will result in a computation of the support obligation. The
113 guidelines shall address how the amount of child support shall be calculated
114 when an award of joint physical custody results in the child or children spending
115 equal or substantially equal time with both parents and the directions and
116 comments and any tabular representations of the directions and comments for
117 completion of the child support guidelines and a subsequent form developed to
118 reflect the guidelines shall reflect the ability to obtain up to a fifty percent
119 adjustment or credit below the basic child support amount for joint physical
120 custody or visitation as described in subsection 11 of this section. The Missouri
121 supreme court shall publish child support guidelines and specifically list and

122 explain the relevant factors and assumptions that were used to calculate the child
123 support guidelines. Any rule made pursuant to this subsection shall be reviewed
124 by the promulgating body not less than once every four years to ensure that its
125 application results in the determination of appropriate child support award
126 amounts.

127 9. There shall be a rebuttable presumption, in any judicial or
128 administrative proceeding for the award of child support, that the amount of the
129 award which would result from the application of the guidelines established
130 pursuant to subsection 8 of this section is the correct amount of child support to
131 be awarded. A written finding or specific finding on the record in a judicial or
132 administrative proceeding that the application of the guidelines would be unjust
133 or inappropriate in a particular case, after considering all relevant factors,
134 including the factors set out in subsection 1 of this section, is required if
135 requested by a party and shall be sufficient to rebut the presumption in the
136 case. The written finding or specific finding on the record shall detail the specific
137 relevant factors that required a deviation from the application of the guidelines.

138 10. Pursuant to this or any other chapter, when a court determines the
139 amount owed by a parent for support provided to a child by another person, other
140 than a parent, prior to the date of filing of a petition requesting support, or when
141 the director of the family support division establishes the amount of state debt
142 due pursuant to subdivision (2) of subsection 1 of section 454.465, the court or
143 director shall use the guidelines established pursuant to subsection 8 of this
144 section. The amount of child support resulting from the application of the
145 guidelines shall be applied retroactively for a period prior to the establishment
146 of a support order and the length of the period of retroactivity shall be left to the
147 discretion of the court or director. There shall be a rebuttable presumption that
148 the amount resulting from application of the guidelines under subsection 8 of this
149 section constitutes the amount owed by the parent for the period prior to the date
150 of the filing of the petition for support or the period for which state debt is being
151 established. In applying the guidelines to determine a retroactive support
152 amount, when information as to average monthly income is available, the court
153 or director may use the average monthly income of the noncustodial parent, as
154 averaged over the period of retroactivity, in determining the amount of presumed
155 child support owed for the period of retroactivity. The court or director may enter
156 a different amount in a particular case upon finding, after consideration of all
157 relevant factors, including the factors set out in subsection 1 of this section, that

158 there is sufficient cause to rebut the presumed amount.

159 11. The court may award child support in an amount that provides up to
160 a fifty percent adjustment below the basic child support amount authorized by the
161 child support guidelines described under subsection 8 of this section for custody
162 awards of joint physical custody where the child or children spend equal or
163 substantially equal time with both parents.

164 12. The obligation of a parent to make child support payments may be
165 terminated as follows:

166 (1) Provided that the state case registry or child support order contains
167 the child's date of birth, the obligation shall be deemed terminated without
168 further judicial or administrative process when the child reaches age twenty-one
169 if the child support order does not specifically require payment of child support
170 beyond age twenty-one for reasons provided by subsection 4 of this section;

171 (2) The obligation shall be deemed terminated without further judicial or
172 administrative process when the parent receiving child support furnishes a sworn
173 statement or affidavit notifying the obligor parent of the child's emancipation in
174 accordance with the requirements of subsection 4 of section 452.370, and a copy
175 of such sworn statement or affidavit is filed with the court which entered the
176 order establishing the child support obligation, or the family support division for
177 an order entered under section 454.470;

178 (3) The obligation shall be deemed terminated without further judicial or
179 administrative process when the parent paying child support files a sworn
180 statement or affidavit with the court which entered the order establishing the
181 child support obligation, or the family support division for an order entered under
182 section 454.470, stating that the child is emancipated and reciting the factual
183 basis for such statement; which statement or affidavit is served by the court or
184 division, as applicable, on the child support obligee; and which is either
185 acknowledged and affirmed by the child support obligee in writing, or which is
186 not responded to in writing within thirty days of receipt by the child support
187 obligee;

188 (4) The obligation shall be terminated as provided by this subdivision by
189 the court which entered the order establishing the child support obligation, or the
190 family support division for an order entered under section 454.470, when the
191 parent paying child support files a sworn statement or affidavit with the court
192 which entered the order establishing the child support obligation, or the family
193 support division, as applicable, stating that the child is emancipated and reciting

194 the factual basis for such statement; and which statement or affidavit is served
195 by the court or division, as applicable, on the child support obligee. If the obligee
196 denies the statement or affidavit, the court or division shall thereupon treat the
197 sworn statement or affidavit as a request for hearing and shall proceed to hear
198 and adjudicate such request for hearing as provided by law; provided that the
199 court may require the payment of a deposit as security for court costs and any
200 accrued court costs, as provided by law, in relation to such request for
201 hearing. When the division receives a request for hearing, the hearing shall be
202 held in the manner provided by section 454.475.

203 **13. If both parents are awarded joint physical and joint legal**
204 **custody equally under subsection 2 of section 452.375, neither parent**
205 **shall have an obligation to pay child support to the other**
206 **parent. Medical expenses shall be paid by both parents equally, with**
207 **the parent providing health insurance for the child to receive a credit**
208 **for the amount of premiums paid for the child's health care coverage.**

209 **14.** The court may enter a judgment terminating child support pursuant
210 to subdivisions (1) to (3) of subsection 12 of this section without necessity of a
211 court appearance by either party. The clerk of the court shall mail a copy of a
212 judgment terminating child support entered pursuant to subsection 12 of this
213 section on both the obligor and obligee parents. The supreme court may
214 promulgate uniform forms for sworn statements and affidavits to terminate
215 orders of child support obligations for use pursuant to subsection 12 of this
216 section and subsection 4 of section 452.370.

452.375. 1. As used in this chapter, unless the context clearly indicates
2 otherwise:

3 (1) "Custody" means joint legal custody, sole legal custody, joint physical
4 custody or sole physical custody or any combination thereof;

5 (2) "Joint legal custody" means that the parents share the
6 decision-making rights, responsibilities, and authority relating to the health,
7 education and welfare of the child, and, unless allocated, apportioned, or decreed,
8 the parents shall confer with one another in the exercise of decision-making
9 rights, responsibilities, and authority;

10 (3) "Joint physical custody" means an order awarding each of the parents
11 significant, but not necessarily equal, periods of time during which a child resides
12 with or is under the care and supervision of each of the parents. Joint physical
13 custody shall be shared by the parents in such a way as to assure the child of

14 frequent, continuing, **substantial**, and meaningful contact with both parents;

15 (4) "Third-party custody" means a third party designated as a legal and
16 physical custodian pursuant to subdivision (5) of subsection [5] 6 of this section.

17 2. **The court shall determine custody by awarding joint physical**
18 **and joint legal custody of the child to both parents equally in the**
19 **absence of any compelling circumstances, unless both parents**
20 **otherwise agree to a custody arrangement. The residence of one of the**
21 **parents shall be designated as the address of the child for the purposes**
22 **of determining what school district the child will attend. The residence**
23 **of both parents shall be designated as the address of the child for all**
24 **mailing purposes, including educational mailings. For the purposes of**
25 **this section, "compelling circumstances" shall include, but not be**
26 **limited to, any violation listed in subsection 4 of this section.**

27 3. **If the court has determined that compelling circumstances**
28 **exist**, the court shall determine custody in accordance with the best interests of
29 the child. The court shall consider all relevant factors including:

30 (1) [The wishes of the child's parents as to custody and the proposed
31 parenting plan submitted by both parties;

32 (2) The needs of the child for a frequent, continuing and meaningful
33 relationship with both parents and the ability and willingness of parents to
34 actively perform their functions as mother and father for the needs of the child;

35 (3)] The interaction and interrelationship of the child with parents,
36 siblings, and any other person who may significantly affect the child's best
37 interests; **and**

38 [(4) Which parent is more likely to allow the child frequent, continuing
39 and meaningful contact with the other parent;

40 (5) The child's adjustment to the child's home, school, and community;

41 (6)] **(2)** The mental and physical health of all individuals involved,
42 including any history of abuse of any individuals involved. If the court finds that
43 a pattern of domestic violence as defined in section 455.010 has occurred, and, if
44 the court also finds that awarding custody to the abusive parent is in the best
45 interest of the child, then the court shall enter written findings of fact and
46 conclusions of law. Custody and visitation rights shall be ordered in a manner
47 that best protects the child and any other child or children for whom the parent
48 has custodial or visitation rights, and the parent or other family or household
49 member who is the victim of domestic violence from any further harm];

50 (7) The intention of either parent to relocate the principal residence of the
51 child; and

52 (8) The wishes of a child as to the child's custodian. The fact that a parent
53 sends his or her child or children to a home school, as defined in section 167.031,
54 shall not be the sole factor that a court considers in determining custody of such
55 child or children].

56 [3.] 4. (1) In any court proceedings relating to custody of a child, the
57 court shall not award custody or unsupervised visitation of a child to a parent if
58 such parent or any person residing with such parent has been found guilty of, or
59 pled guilty to, any of the following offenses when a child was the victim:

60 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060,
61 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111,
62 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215;

63 (b) A violation of section 568.020;

64 (c) A violation of subdivision (2) of subsection 1 of section 568.060;

65 (d) A violation of section 568.065;

66 (e) A violation of section 568.080;

67 (f) A violation of section 568.090; or

68 (g) A violation of section 568.175.

69 (2) For all other violations of offenses in chapters 566 and 568 not
70 specifically listed in subdivision (1) of this subsection or for a violation of an
71 offense committed in another state when a child is the victim that would be a
72 violation of chapter 566 or 568 if committed in Missouri, the court may exercise
73 its discretion in awarding custody or visitation of a child to a parent if such
74 parent or any person residing with such parent has been found guilty of, or pled
75 guilty to, any such offense.

76 [4.] 5. The general assembly finds and declares that it is the public policy
77 of this state that frequent, continuing and meaningful contact with both parents
78 after the parents have separated or dissolved their marriage is in the best
79 interest of the child, except for cases where the court specifically finds that such
80 contact is not in the best interest of the child, and that it is the public policy of
81 this state to encourage parents to participate in decisions affecting the health,
82 education and welfare of their children, and to resolve disputes involving their
83 children amicably through alternative dispute resolution. [In order to effectuate
84 these policies, the court shall determine the custody arrangement which will best
85 assure both parents participate in such decisions and have frequent, continuing

86 and meaningful contact with their children so long as it is in the best interests
87 of the child.

88 5.] **6.** Prior to awarding the appropriate custody arrangement in the best
89 interest of the child **under subsection 3 of this section**, the court shall
90 consider each of the following as follows:

91 (1) Joint physical and joint legal custody to both parents, which shall not
92 be denied solely for the reason that one parent opposes a joint physical and joint
93 legal custody award. The residence of one of the parents shall be designated as
94 the address of the child for mailing and educational purposes;

95 (2) Joint physical custody with one party granted sole legal custody. The
96 residence of one of the parents shall be designated as the address of the child for
97 mailing and educational purposes;

98 (3) Joint legal custody with one party granted sole physical custody;

99 (4) Sole custody to either parent; or

100 (5) Third-party custody or visitation:

101 (a) When the court finds that each parent is unfit, unsuitable, or unable
102 to be a custodian, or the welfare of the child requires, and it is in the best
103 interests of the child, then custody, temporary custody or visitation may be
104 awarded to any other person or persons deemed by the court to be suitable and
105 able to provide an adequate and stable environment for the child. Before the
106 court awards custody, temporary custody or visitation to a third person under this
107 subdivision, the court shall make that person a party to the action;

108 (b) Under the provisions of this subsection, any person may petition the
109 court to intervene as a party in interest at any time as provided by supreme court
110 rule.

111 [6. If the parties have not agreed to a custodial arrangement, or the court
112 determines such arrangement is not in the best interest of the child,] **7. If the**
113 **court determines that compelling circumstances exist and a custody**
114 **arrangement under subsection 2 of this section is inappropriate**, the
115 court shall include a written finding in the judgment or order based on the public
116 policy in subsection [4] **5** of this section and each of the factors listed in
117 [subdivisions (1) to (8) of] subsection [2] **3** of this section detailing the specific
118 relevant factors that made a particular arrangement in the best interest of the
119 child. If a proposed custodial arrangement is rejected by the court, the court
120 shall include a written finding in the judgment or order detailing the specific
121 relevant factors resulting in the rejection of such arrangement.

122 [7.] 8. Upon a finding by the court that either parent has refused to
123 exchange information with the other parent, which shall include but not be
124 limited to information concerning the health, education and welfare of the child,
125 the court shall order the parent to comply immediately and to pay the prevailing
126 party a sum equal to the prevailing party's cost associated with obtaining the
127 requested information, which shall include but not be limited to reasonable
128 attorney's fees and court costs.

129 [8.] 9. As between the parents of a child, no preference [may] shall be
130 given to either parent in the awarding of custody because of that parent's age,
131 sex, or financial status, nor because of the age or sex of the child.

132 [9.] 10. Any judgment providing for custody shall include a specific
133 written parenting plan setting forth the terms of such parenting plan
134 arrangements specified in subsection [7] 8 of section 452.310. Such plan may be
135 a parenting plan submitted by the parties pursuant to section 452.310 or, in the
136 absence thereof, a plan determined by the court, but in all cases, the custody plan
137 approved and ordered by the court shall be in the court's discretion and shall be
138 in the best interest of the child.

139 [10.] 11. Unless a parent has been denied custody rights pursuant to this
140 section or visitation rights under section 452.400, both parents shall have access
141 to records and information pertaining to a minor child, including, but not limited
142 to, medical, dental, and school records. If the parent without custody has been
143 granted restricted or supervised visitation because the court has found that the
144 parent with custody or any child has been the victim of domestic violence, as
145 defined in section 455.010, by the parent without custody, the court may order
146 that the reports and records made available pursuant to this subsection not
147 include the address of the parent with custody or the child. Unless a parent has
148 been denied custody rights pursuant to this section or visitation rights under
149 section 452.400, any judgment of dissolution or other applicable court order shall
150 specifically allow both parents access to such records and reports.

151 [11.] 12. Except as otherwise precluded by state or federal law, if any
152 individual, professional, public or private institution or organization denies access
153 or fails to provide or disclose any and all records and information, including, but
154 not limited to, past and present dental, medical and school records pertaining to
155 a minor child, to either parent upon the written request of such parent, the court
156 shall, upon its finding that the individual, professional, public or private
157 institution or organization denied such request without good cause, order that

158 party to comply immediately with such request and to pay to the prevailing party
159 all costs incurred, including, but not limited to, attorney's fees and court costs
160 associated with obtaining the requested information.

161 [12.] **13.** An award of joint custody [does not preclude] **precludes** an
162 award of child support pursuant to section 452.340 and applicable supreme court
163 rules. The court shall consider the factors contained in section 452.340 and
164 applicable supreme court rules in determining an amount reasonable or necessary
165 for the support of the child, **if applicable.**

166 [13.] **14.** If the court finds that domestic violence or abuse, as defined in
167 section 455.010 has occurred, the court shall make specific findings of fact to
168 show that the custody or visitation arrangement ordered by the court best
169 protects the child and the parent or other family or household member who is the
170 victim of domestic violence, as defined in section 455.010, and any other children
171 for whom such parent has custodial or visitation rights from any further harm.

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Bill

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